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Held at the Palais des Nations, Geneva,
on Monday, 23 March 1998, at 3 p.m.

Chairman: Mr. SELEBI (South Africa)

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The meeting was called to order at 3 p.m.

STATEMENT BY MR. ABDULLAH MOHAMMED OMAR, MINISTER OF JUSTICE OF SOUTH AFRICA

1. Mr. OMAR (South Africa) recalled that, in 1993, the year when the Vienna Declaration and Programme of Action had been adopted, South Africa had still been ruled by an apartheid regime under which blacks had not enjoyed the same rights as whites. The priority for the liberation movements had been to ensure that the negotiations then in progress would lead to genuine political emancipation. That objective had been achieved when the historic 1994 elections had swept the white minority from office and led to the creation of a democratic constitution and parliament. But the new South Africa had been left with the terrible legacy of apartheid: massive social and economic inequalities, the marginalization and social exclusion of the majority of black people, unemployment and a culture of violence and criminality, including corruption and a lack of respect for human rights. At the same time, whites had continued to control the economy and institutions such as the civil service, the army, the police and the justice system. The process of transforming society, the economy, institutions and attitudes, which had been under way for nearly four years, aimed at enabling all South Africans to live a life of dignity. Because that process was being led by freedom fighters who had participated in United Nations activities and, in particular, in the adoption of the Vienna Declaration and Programme of Action, it had been possible to ensure that South Africa's new constitutional framework reflected the values of the United Nations by emphasizing peace, democracy, equality, development and human rights. Thus, the Constitution provided for an independent judiciary, contained a bill of rights and established a constitutional court and other institutions, including a human rights commission and a gender equality commission, charged with consolidating democracy and protecting and promoting human rights. There was still a long way to go, but the process of ensuring true equality had begun.

2. On 21 March 1998, South Africa had celebrated its Human Rights Day, which had been an occasion not only for commemorating the victims of the Sharpeville riots of 1960, but also for the presentation to President Mandela of a framework for the development of a national plan of action in line with the aims of the Vienna Declaration. That process had begun in May 1997 with a major conference organized by the South African Human Rights Commission in order to discuss the Vienna Declaration and various human rights instruments. All stakeholders, from non-governmental organizations (NGOs) to government departments, had been involved. South Africa hoped that the national action plan would be ready in time to be submitted to the Secretary-General of the United Nations on Human Rights Day, 10 December 1998. Based on an audit of the current situation, the plan would define measures to be undertaken in the following five years to promote human rights in South Africa. It would also make it possible to identify areas of cooperation in that regard between Government and civil society, to monitor the observance of human rights and to gauge the commitment of the Government in that area.

3. As examples of the steps taken by the Government, he mentioned in particular the measures in favour of women, children and the disabled. South Africa had ratified the Convention on the Elimination of All Forms of Discrimination against Women without reservation. In addition, an office on

the status of women had been established in the Office of the Presidency and education, information and training programmes had been implemented and would be extended. South Africa had also ratified the Convention on the Rights of the Child without reservation. Steps had been taken to bring domestic legislation into line with the provisions of the Convention and to improve the situation of children who were in prison, the victims of sexual offences or from disadvantaged backgrounds. A desk had also been created in the Office of the Presidency to promote the rights of the disabled and to prevent discrimination against them. Enormous problems still remained, however. South Africa had the highest incidence of rape in the world and the murder rate continued to give cause for concern. Nevertheless, there were already signs that growth, social and economic transformation, the establishment of the rule of law, the building of a human rights culture and the implementation of the country's first national crime prevention strategy would enable the situation to change. South Africa was determined to pursue democratization, peace, development and respect for the human rights of all peoples.

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (agenda item 12) (continued) (E/CN.4/1998/77 and Add.1 and 2, 78, 79, 124, 125, 128 and 131; A/52/471)

4. Ms. KING (United States of America) said that her country had been founded both on the principle that all men were equal and on the shameful institution of slavery. That paradox had marked the nation's entire history. The Bill of Rights included in the 1789 Constitution had launched a wave of democratic governance that still encircled the globe but, in many countries of the world, those rights were still not a reality after two centuries. Yet that same Constitution had denied Africans in the New World every human right. The abolitionist movement had begun at about that time. Ultimately, the Civil War had put an end to slavery, but not to the inequality between the races. Wave after wave of immigrants had arrived and had been more or less well received. Alongside the now emancipated Blacks, the new arrivals, Catholics, Jews, Europeans, Chinese and Japanese, had helped a new America to emerge, proud, powerful and multi-ethnic. All had joined forces to combat segregation and racial discrimination. New laws had strengthened the legal protection afforded to minorities, more and more of whom had entered the mainstream of American social, economic and political life since then. Nevertheless, inequalities between White and Black America persisted - in income, in access to health care, education, housing and employment, and in life expectancy. In order to bridge the gap between ideals and reality, President Clinton had launched a nationwide debate on race in 1997, focusing on reconciliation and dialogue between the races, education on racism and bridging racial divides. Following on from the actions of a succession of eminent Americans such as John F. Kennedy and Martin Luther King Jr., it pointed the way to the future. For demographic changes meant that there would be no majority race or ethnic group in the United States of the twenty-first century.

5. As a result of migration and globalization, cultures had never been in such close contact. The quality of life and institutions in the years to come would depend in large part on what approach was adopted in dealing with that phenomenon. For that reason, the United States of America hoped to be able to participate fully in the third World Conference against Racism. Pending the Congress's decision on participation, she assured the Commission of the

United States President's wholehearted support for the undertaking. Racism and ethnic conflict were not North-South or East-West phenomena, but worldwide problems, as shown by the recent violence in the former Yugoslavia, the Great Lakes region, Sudan and the Middle East. She therefore invited all countries to pledge to redouble their efforts to combat racism in all its forms.

6. Mr. MERIÇ (Observer for Turkey) said that racism, xenophobia and intolerance continued to present a threat to the peace and harmony of many societies. In its contemporary form, racism was not so much an official doctrine of racial superiority or exclusivity, but a malignant state of mind or psychological ailment that caused some people to despise or ill-treat others for no reason other than physical difference. Such concealed racism was all the more dangerous because it took its victims by surprise. It surfaced in the form of arson against houses, mosques, churches or synagogues, or assaults on innocent people. The perpetrators of such acts should naturally be punished. Nevertheless, it should not be forgotten that political leaders, under a cloak of "cultural relativism" and the defence of human rights, sometimes encouraged such tendencies in susceptible minds. Such a fundamental issue should therefore be examined by the international community.

7. The latest report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/1998/79) noted an increase in discrimination against Blacks, Muslims, Jews, Gypsies and migrant workers. Despite a global tendency towards the integration and free movement of labour, receiving countries were adopting xenophobic and discriminatory legislation and regulations in order to protect their own labour force.

8. The delegation of Turkey welcomed the convening of the Seminar on immigration, racism and racial discrimination (E/CN.4/1998/77/Add.1) and of the seminar on the role of Internet with regard to the provisions of the International Convention on the Elimination of All forms of Racial Discrimination (E/CN.4/1998/77/Add.2). The misuse of new communications technologies for disseminating racism propaganda was a cause for concern. Developing ethical rules for the use of such technologies did not impinge on freedom of expression and his delegation commended all States that had chosen to penalize incitement to racial hatred in all its forms, including electronic forms. New technologies should, rather, be contributing to education, which played a vital role in combating racism. Lastly, he said that the Government of Turkey supported the organization of a world conference against racism and attached great importance to the preparatory work. Racism had always been behind all crimes against humanity, including "ethnic cleansing", which had become alarmingly widespread.

9. Mr. KHORRAM (Observer for the Islamic Republic of Iran) noted that a resurgence of racism and racial hatred seemed to be thwarting all efforts at promoting tolerance. It had to be acknowledged that the international community in general and the United Nations system in particular had shown little interest in combating the phenomenon. That was illustrated by the lack of progress to be seen in implementing the Programme of Action for the

Third Decade to Combat Racism and Racial Discrimination. Similarly, the repeated calls by the Commission for assistance to be provided to the Special Rapporteur had still not been heeded.

10. For several years, attacks on individuals, property and places of worship within Muslim communities had been on the increase, particularly in Western countries. In his report (E/CN.4/1998/79), the Special Rapporteur rightly argued that such acts were accompanied more and more frequently by a form of "Islamophobia" and that it was therefore difficult to separate acts of racial discrimination from acts of religious intolerance, as each could reinforce or encourage the other. His delegation disagreed, however, with the Special Rapporteur's conclusion that the issue of Islamophobia should be referred to the Special Rapporteur on the question of religious intolerance and believed that the magnitude of the problem warranted its consideration by both Special Rapporteurs. In addition, his delegation recalled that the Commission, in its decision 1997/125, had requested the Special Rapporteur to correct a sentence in paragraph 27, section 3, of his 1997 report (E/CN.4/1997/71), which it considered defamatory to Islam and Muslims. It was regrettable that the question had not yet been resolved and his delegation urged the Special Rapporteur to implement in full the Commission's decision.

11. He drew the Commission's attention to the alarming situation in Kosovo, where non-violent demonstrations by the Albanian population had been brutally suppressed by the Government of Yugoslavia. Around 100 civilians had lost their lives. There was an urgent need for the international community to take action to avoid a fresh wave of ethnic cleansing in the region. The Commission on Human Rights should strongly condemn the violation of the fundamental rights of Kosovo Albanians and put an end to the escalating violence.

12. In conclusion, his delegation expressed the hope that the century to come would be a century free of racism. The World Conference against Racism would provide a unique opportunity to define an international platform for action and he invited all delegations to support the initiative.

13. Mr. AL-LAFI (Observer for the Libyan Arab Jamahiriya) said that, even though the people of South Africa, for example, had finally succeeded in freeing themselves from the apartheid regime, other peoples continued to be oppressed by racist entities. Israel, for example, with the political and economic help of great Powers which claimed to champion human rights and the struggle against racial discrimination, continued to pursue its policy of genocide in occupied Palestine and to establish Jewish colonies under historical, geographical and religious pretexts that had no connection with reality. Those who opposed that policy found themselves charged with anti-Semitism even when they themselves were Jewish. Thanks to the support of countries such as the United States, which had a right of veto in the Security Council, the State of Israel flouted with impunity the various resolutions adopted by the international community.

14. His delegation supported the report of the Special Rapporteur on contemporary forms of racism (E/CN.4/1998/71), particularly with respect to the information on xenophobia towards Muslim immigrant workers. In the Libyan Arab Jamahiriya, foreign workers were treated with tolerance, in accordance

with the relevant international instruments. The Libyan Arab Jamahiriya wished to be as closely involved as possible with preparations for and the organization of the World Conference against Racism.

15. Mr. GALILEE (Observer for Israel) said that, despite the terrible lessons of the Second World War and the efforts of the international community to combat the scourge of racial hatred and discrimination, no country was yet immune. Even in the most developed countries, migrant workers were the victims of discrimination. His delegation welcomed the work of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and hoped that, thanks to those efforts and the action of the new High Commissioner for Human Rights, more attention would be paid to the evil phenomenon.

16. In the course of the year, there had been some decline in violence against Jews as a result of the more stringent enforcement of anti-racist and anti-terrorist laws and of the initiatives taken by Governments, international organizations and non-governmental organizations to combat racism. That achievement could, however, be threatened by the electoral success of parties of the extreme right in Europe. The question of abandoned Jewish properties had also triggered worrisome anti-Semitic reactions, even in Switzerland.

17. Racism frequently dared not speak its name. Foreigners or immigrants were blamed for rising unemployment or criminality. Extremist groups were also making increasing use of the Internet to disseminate their racist and anti-Semitic ideas and the Commission should examine the problem as a matter of urgency. In particular, it should frustrate attempts to remove references to anti-Semitism in Commission resolutions.

18. Ms. PARKER (International Educational Development) urged the Special Rapporteur on contemporary forms of racism to step up investigations of anti-Asian racism. She drew particular attention to the situation described in document E/CN.4/1998/NGO/90 relating to the citizens of Japanese ancestry in 13 countries of Latin America who had been quite illegally interned in labour camps during the Second World War by the United States of America and most of whom had received no compensation.

19. International Educational Development was convinced that the reason the allied Powers had not required Japan to pay compensation to the victims of the Second World War - including millions of massacred Chinese, Korean forced labourers, "comfort women" and the victims of medical experimentation - was in part that the majority of those victims had been Asian. Yet no effort had been spared to obtain compensation for the victims of the Holocaust.

20. With regard to Sri Lanka, she recalled that the conflict that was tearing the country apart was due to the systematic refusal of successive Sinhalese Governments to recognize the rights and cultural identity of the increasingly oppressed Tamil minority. International Educational Development therefore urged the Commission to heed the call of the Anglican Church of Australia for a political solution that recognized the right of the Tamil people to determine their political status and the need to assure the full human rights of all the peoples of Sri Lanka.

21. Ms. AJAMU (December 12th Movement International Secretariat) said that, in its resolution 52/111 of 12 December 1997, the United Nations General Assembly regretted the lack of interest, support and financial resources for the Third Decade to Combat Racism. The United Nations' major debtor, the United States of America, could perhaps help to solve the problem by assisting the cause of human rights with more than fine words.

22. It might be useful to examine the situation in the United States itself, since, as everyone knew, racism was ubiquitous there. The quality of the education provided to Blacks was much lower than that of education for Whites. Within the justice system, the figures spoke for themselves: one third of young Blacks aged between 18 and 29 were in prison. Similarly, the unemployment rate in 1994 among young people aged between 16 and 19 had been 41 per cent for Blacks compared with 17 per cent for Whites, while, in 1997, 42 per cent of Black children had been born into families living in poverty.

23. Her organization believed that the issue should appear on the agenda of the World Conference against Racism and called for the immediate establishment of a working group to handle the preparatory work, including the organization of regional conferences, with the active participation of NGOs.

24. Mr. WAREHAM (International Association Against Torture - IAAT) said that, like the General Assembly in its resolution 52/111 of 12 December 1997, he regretted the lack of interest, support and financial resources for the Third Decade and its related Programme of Action, reflected in the fact that very few of the activities planned for the period 1994-1997 had been carried out. To understand the extent of the phenomenon of racism, it was necessary only to examine the situation in those countries that were most capable of making a financial contribution to the success of the Third Decade, but had not done so.

25. An opinion poll conducted in late 1997 had found that, in the countries of the European Union, nearly one in three citizens had described themselves as "quite racist" or "very racist". One person in five believed that non-European immigrants should be sent back to their country of origin. In addition, according to Human Rights Watch, restrictions on the right to asylum were increasing in Europe.

26. In the United States of America, racism was still rife. The rate of incarceration of African-American men was currently four times higher than the rate of incarceration of black men in South Africa had been under apartheid. Studies showed that racist considerations continued to form the basis for hiring decisions. The infant mortality rate for Blacks was still twice the rate for Whites. Four years after its belated ratification of the Convention on the Elimination of All Forms of Racial Discrimination, the United States had still not submitted its initial report to the Committee on the Elimination of Racial Discrimination and had arrogantly indicated that it had no intention of doing so in the near future. IAAT supported the work of the Special Rapporteur on contemporary forms of racism and requested him to evaluate the steps that the Government of the United States had taken to implement the recommendations he had made after his visit to that country in 1994.

27. In order to ensure the success of the Third Decade against Racism and the World Conference against Racism, the Commission should establish a working group which should start work immediately and which should involve NGOs in its work on an equal footing with other participants; the funds needed for the implementation of the Third Decade and the organization of the World Conference should come from the regular budget of the United Nations and should not depend solely on voluntary contributions; and, lastly, the various regional groups should organize preparatory conferences.

28. Ms. GIRMA (African Association of Education for Development - ASAFED) said she hoped that the World Conference against Racism would make it possible to arrive at a clear definition of racism, racial discrimination, xenophobia and other forms of intolerance and that it would lead to concrete results. In order to prepare for the Conference, seminars and meetings should be organized at the subregional and regional levels, along the lines of the Cotonou Seminar which had been held in June 1997 and had examined various forms of discrimination in Africa, as indicated in the Special Rapporteur's report (E/CN.4/1998/79). The tragedy in Rwanda had shown how dangerous it could be to encourage populations to organize themselves on the basis of membership of an ethnic group. Ethnic discrimination should therefore be closely studied as a form of intolerance related to racism.

29. The United Nations Seminar on Immigration, Racism and Racial Discrimination, held in Geneva from 5 to 9 May 1997, had requested all Governments to consider and keep under review the question of introducing measures to allow immigrants to participate fully in local elections (E/CN.4/1998/77/Add.1). Her association supported that request. Those who lived and worked in a given region should be able to have a say in the administration of that region. Moreover, if immigrants had the right to vote, they would be more respected, at least by those who needed their votes.

30. In order to avoid racial violence in the urban areas of Europe and the United States and ethnic cleansing in eastern Europe and Africa, it was vital to educate people and inform them of the dangers that racism and intolerance represented.

31. Ms. PAL (All India Women's Conference) said that, at a time when apartheid was being dismantled in South Africa, the international community should beware of underestimating the extent of racism and xenophobia and the danger posed by politicians who used unemployment and economic and social problems to further their criminal ideology. She congratulated the Commission, the Committee on the Elimination of Racial Discrimination and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, as well as the High Commissioner for Human Rights, on their efforts to combat racism.

32. The Commission should establish a working group to prepare for the World Conference against Racism, with the help of Governments, specialized agencies, other international organizations, competent United Nations bodies, regional organizations, NGOs, the Committee on the Elimination of Racial Discrimination, the Special Rapporteur on contemporary forms of racism and other human rights mechanisms. It should also organize preparatory meetings at the regional level, seek sources of financing for the Conference, draw up

an agenda in accordance with the objectives defined by the General Assembly and decide where the Conference would be held. In view of its historic role in combating racism, South Africa would appear to be the ideal choice to host the Conference.

33. Ms. MOYA (American Association of Jurists) said her organization welcomed the fact that the General Assembly had decided that a world conference against racism would be convened not later than the year 2001 and that it would be action-oriented and focus on practical measures to eradicate racism. The General Assembly had also requested Governments, agencies and all other concerned bodies and organizations to participate in the preparations for the Conference, which, it was hoped, would adopt a declaration and a convincing and realistic programme of action that would oblige States to deal with the worldwide scourge of racism. Her Association urged the various United Nations human rights bodies, such as the Committee on the Elimination of Racial Discrimination, to coordinate their activities more closely.

34. She drew the Commission's attention to the murder, by a paramilitary group in Colombia, of Francisco Hurtado, a leading member of the African-American community, who had lived on the west coast and tried to maintain a way of life and traditional production methods that respected the environment.

35. Ms. CLERCKX (European Union of Public Relations) said that peoples who had long lived together in relative harmony were now demanding a space of their own in order to create homogeneous societies with all the risks of discrimination and xenophobia that that entailed.

36. The fact that some countries had achieved a very high level of scientific, economic and technical development was often the result in part of the talents of immigrants. Yet, in a number of such countries, there was a rising tide of racism and a tightening of restrictions on immigration. Economic globalization required the mobility of all resources, including human beings. Except in very cloistered societies, economic progress was due largely to the pooling of diverse talents. Now, countries that had prided themselves on being a melting pot of civilizations were in the forefront of attempts to restrict the free movement of persons. Increasingly, economic fears were taking on racial connotations and immigrants were seen as threatening an established and, by implication, superior way of life by bringing in their own culture.

37. Xenophobia was gaining ground because the imperatives of domestic politics prevented the question of immigration from being dealt with on purely economic or humanitarian grounds. Contemporary racism was no different from that practised by the colonial powers: skin colour, the fact of being born in a particular region and religious belief were still deciding factors. In order to combat racial discrimination and xenophobia, the first thing that was needed was to recognize that everyone had at some time harboured racist sentiments and the next step was to attempt to convince others that diversity was an asset.

38. Ms. VERZEGNASSI (International Progress Organisation) said that, on the threshold of a new millennium, it was clear that the origins of most conflicts

had lain and still lay in religion or ethnicity. It was regrettable that religious or ethnic differences were exploited by certain countries for strategic ends.

39. The war in Afghanistan, for example, was being fought on ethnic lines and Bosnia and Herzegovina had shown where concepts of ethnic or racial purity could lead. In other societies, too, attempts to end affirmative action, tighten up visa policies, restrict recruitment or permit the immigration only of persons with specific skills, were examples of the threats to the harmonious coexistence of peoples. In south Asia, the weakness of democratic structures encouraged discrimination. In Pakistan, for example, the Ahmediyas and Mohajirs were persecuted. The armed groups operating in the countries of the Indian subcontinent and seeking to destabilize regions such as Jammu and Kashmir were a threat to the harmonious coexistence that lay at the heart of the ancient cultures of south Asia.

40. Democratic, secular institutions needed to be strengthened, since they were the most effective bulwark against all forms of discrimination. Experience had shown that discrimination was practised by those who either had never believed in democracy or had begun to question its tenets because it had not fulfilled their own aspirations. It behoved the human rights community to educate Governments on the need to abandon policies that perpetuated discrimination. To that end, the Commission should first compile data on those countries whose constitutions, policies and legal structures sanctioned discrimination and on those which had encouraged conflicts in which, as was happening in Afghanistan, ethnic discrimination was a weapon of war.

41. Mr. KIRKYACHARIAN (Movement Against Racism and for Friendship Among Peoples) said that racism had changed constantly since its emergence in an identifiable form in the nineteenth century, after a long period of gestation. There were those who interpreted that constant transformation as continuous progress and therefore a retreat by racism, as exemplified by Nelson Mandela, who was President of what was now a non-racial State. However, those virulent forms of racism had been replaced by a diffuse, subtle, self-righteous form of racism which was just as cruel when necessary and according to which inequalities - or, at least, differences - between cultures made their coexistence very difficult or even impossible. An invasion by non-native cultures was thus held to be the cause of all problems.

42. The democratic States strongly condemned racism and discrimination and yet the influence of racist ideas was growing and de facto segregation was more and more marked. Marginalization, isolation in ghettos of violence, poverty, underdevelopment and, inevitably, crime, fuelled racist opinion in its turn. Certain responsible European politicians were becoming concerned at the persistence of racism. But it was absurd to expect any lessening of racism as long as every determining element of society was taking steps to exclude those who, by virtue of their status, found themselves in a highly vulnerable situation: migrant workers and their families. The situation was similar in other developed countries. In the United States, civil rights had in many cases become a dead letter, since men and women of colour, both young and not so young, were voting less and less, convinced as they were of the harshness of a system that rejected them. It was for that reason that anti-racists were so concerned by the fact that the death penalty was applied

unequally to Whites and Blacks - one of the most terrible consequences of apartheid and, unfortunately, a situation still characteristic of the United States.

43. His organization was therefore convinced of the usefulness of the planned World Conference against Racism. If its only outcome was to make the international community understand what racism really was and that it was a threat to all of humanity and to encourage it finally to take steps to usher in the rule of true equality, it would be of major historic importance.

44. Ms. SPALDING (World Federation for Mental Health) said that there was an urgent need for the prevention of the sickness of racism and for the treatment and rehabilitation of those that suffered from it. It was the fiftieth anniversary in 1998 not only of the Universal Declaration of Human Rights, but also of the World Health Organization (WHO) and of the World Federation for Mental Health. Both organizations encouraged healthy individuals and healthy communities through innovative prevention, rehabilitation and reintegration strategies. In its positive health programmes, for example, WHO used the Worldwide Web to boost its effectiveness in promoting health and combating sickness. However, the Internet could also be used to propagate the pernicious virus of hatred. The recent seminar on that issue had shown how important it was to develop the use of the Internet for the positive aims of prevention and promotion, to make it into a "vaccine" or "antidote". There was an urgent need to mobilize against the causes of racism in individuals and society.

45. During the 1998 session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, her federation would be organizing a two-week "fête d'excellence", including seminars, symposiums and cultural events. It had created a Web site (www.fetexcel.com) and would present to the Sub-Commission all the data collected there on racist behaviour and legislation and on suggested ways of eliminating racism. Other media, such as radio, television and videoconferencing, would be used to promote understanding and respect for others.

46. The CHAIRMAN invited the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to make his concluding observations.

47. Mr. GLÈLÈ-AHANHANZO (Special Rapporteur) said he hoped that sufficient human, material and financial resources would be released to ensure the smoother implementation of the mandate entrusted to him by the Commission, in particular with respect to the preparation of the World Conference against Racism. He requested the specialized agencies, regional organizations and, in particular, non-governmental organizations to assist him with the technical and scientific preparation for the Conference with documented studies and by examining the current situation and the realities of racial discrimination, xenophobia and anti-Semitism. He would continue to work together with the Special Rapporteur on the question of religious intolerance, while attempting to avoid any confusion of their mandates and any politicization of the issue that might prejudice the ideals the Commission was defending.

48. He was convinced that the international community would overcome racism in the same way as it had overcome apartheid or that it would at least succeed in mitigating the effects of racial discrimination and racism, which was a persistent phenomenon, the recurring manifestations of which were due to differences in levels of development. Through education and the acceptance of the presence of others in a culture, the international community would succeed in repelling racist and xenophobic behaviour in the world. The fight against racism, discrimination, xenophobia and anti-Semitism was waged in everyday life.

49. Mr. OULD MOHAMED LEMINE (Observer for Mauritania), speaking in exercise of the right of reply and in response to the serious accusations of apartheid made against his country by the representative of the African Commission of Health and Human Rights Promoters, said that the Government and people of Mauritania, who had never for a moment shirked their duty of solidarity towards the South African people and its national liberation movements, could only be insulted by such a slight. Nothing was more foreign to Mauritania, its history or its society than discrimination, whether on the grounds of race, origin or social status. Such attacks were the work of a small cell, whose members, marginalized within their own country, had chosen to establish themselves in Europe in order to promote violence and intercommunal hatred. It was clearly that cell which was manipulating the representative of the NGO concerned.

50. The CHAIRMAN declared the general debate on agenda item 12 closed.

STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS (agenda item 13) (E/CN.4/1998/25, 82 and Corr.1, 83 and 84; E/CN.4/1998/NGO/62; E/1997/72)

EFFECTIVE FUNCTIONING OF BODIES ESTABLISHED PURSUANT TO UNITED NATIONS HUMAN RIGHTS INSTRUMENTS (agenda item 14) (E/CN.4/1998/85 and Corr.1; E/CN.4/1997/74; A/51/482; A/52/516)

51. Ms. ANDERSON (Ireland) recalled that the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child stipulated that the death penalty should not be applied to persons aged under 18. Yet the Committee on the Rights of the Child had repeatedly expressed concern at the fact that several States had executed persons condemned to death for crimes committed while they were under 18. Her delegation was also alarmed at the reports of the Special Rapporteur on Summary or Arbitrary Executions concerning the execution of members of another vulnerable group, the mentally disabled. In that regard, she informed the members of the Commission that she would be submitting a draft resolution on the rights of disabled persons. The disregard of the limitations set by the International Covenant on Civil and Political Rights on the use of the death penalty was made all the more unacceptable by the fact that those restrictions were, at best, a minimum.

52. Nevertheless, the trend towards the suspension and abolition of the death penalty was gathering pace and her delegation believed that the process was irreversible. As the Secretary-General's report (E/CN.4/1998/82) indicated, since the Commission's fifty-third session, two States had abolished the death penalty for all crimes, one State had adopted a moratorium on its use and one had restricted its use; in addition, two States had acceded

to the Second Optional Protocol to the International Covenant on Civil and Political Rights. Regional organizations such as the Council of Europe had issued a clear call for the universal abolition of the death penalty. That approach had been reinforced by the decision to exclude the death penalty for crimes against humanity that were under consideration by the International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda. The delegation of Ireland hoped that a similar provision would be included in the draft statute of the International Criminal Court to be completed in the coming months. In the context of the adoption of a draft declaration on human rights defenders, she paid tribute to those who had suffered the death penalty for their work and to all the individuals and non-governmental organizations that helped to keep international attention focused on the issue.

53. Her delegation urged that the deterrence argument in favour of the death penalty should be examined calmly and rationally in the light of the accumulated experience of many countries. It believed that the abolition of the death penalty affirmed human dignity, acknowledged the fallibility of all judicial systems and contributed to the progressive development of human rights. The Commission, which, at its fifty-third session, had adopted resolution 1997/12, in which, for the first time, it had appealed to States to abolish the death penalty, should take a strong, clear stand on the issue at a time when the international community was preparing to celebrate the fiftieth anniversary of the Universal Declaration of Human Rights, with its central emphasis on the right to life and the right to freedom from torture and cruel, inhuman or degrading treatment.

54. Mr. ALESSI (Italy), replying to the objections expressed by certain countries to Italy's action aimed at abolishing the death penalty, said he rejected the argument that the issue of capital punishment had a direct connection with religious principles that no one should challenge. The abolition of the death penalty should be based on principles which were common to all religions - the sanctity of human life, the value of human dignity, mercy and compassion - and which could not be appropriated or repudiated by any one religion.

55. Neither did Italy's initiative challenge the principle of the absolute sovereignty of each State in matters relating to criminal law. However, it could not be maintained that the application of the death penalty fell outside the scope of international law, for there were many international norms pertaining to the issue, some of which were recalled in Commission resolution 1997/12. With regard to the possible evolution of international law towards the total abolition of the death penalty, it was appropriate for it to be discussed by the Commission since the death penalty was an infringement of the most fundamental of human rights, the right to life. Lastly, Italy's appeal to all States to place a moratorium on executions did not impose any legal or moral obligation, but aimed to encourage all members of the international community to follow the example of those States that had already adopted such a course.

56. With regard to the presumed deterrent effect of the death penalty, his delegation stressed once again that criminologists and statisticians had not established a direct connection between the application of the death penalty

and a decrease in violent crime, especially murder. On the contrary, there appeared to be a correlation between the inevitability of punishment (prison sentences) and the decrease of crime in general. It was a fact that the States where most executions took place were also those where murder was most common.

57. The State should punish the perpetrators of crimes, and harshly, when necessary, but it should also break the chain of death and aim to protect its citizens and enable the guilty to redeem themselves; it should therefore abstain from an act which lay on the border between justice and revenge.

58. Mr. WILLE (Observer for Norway) said that his country was convinced of the usefulness of the United Nations human rights treaty bodies and agreed with the recommendations of the independent expert, Mr. Philip Alston, on approaches to enhancing their effective operation, which were summarized in the report of the Secretary-General, document E/CN.4/1998/85. Universal ratification of the six core human rights treaties would establish the best possible foundation for international endeavours to promote respect for human rights and assistance should be given to States that wished to ratify them, but were encountering practical difficulties in doing so. States which had ratified such instruments should also be given help in fulfilling their reporting obligations, within the framework of the programme of technical cooperation and advisory services in the field of human rights. In that regard, Norway welcomed the assistance given by UNICEF for the implementation of the Convention on the Rights of the Child.

59. His delegation also supported the independent expert's suggestion that, in view of the high number of overdue reports, all treaty bodies should be urged to adopt procedures that would allow them to examine country situations even in the absence of a report. It also agreed with the independent expert's view that, while initial reports should be comprehensive, subsequent periodic reports should be shorter and more precise and should focus on a limited number of issues identified well in advance and tailored to the situation of each State party. His Government would also encourage greater coordination and sharing of information among the treaty bodies. It was concerned, however, that the consolidation of the treaty bodies would cause practical difficulties, since not all States had ratified the same range of conventions and there was thus a risk that particular issues, such as women's rights, would not receive adequate attention. Furthermore, there was nothing to indicate that such a consolidation would significantly alleviate the burden that reporting represented for States parties.

60. While welcoming the efforts of the treaty bodies themselves to reform their working methods and procedures and supporting the general reform process being carried out by the Secretariat in that area, his delegation emphasized that it was essential to release additional resources if the system was to function effectively. It would work with other delegations in seeking solutions that would allow the treaty bodies to continue to play a vital role in the promotion and protection of human rights.

61. Ms. TALVET (Observer for Estonia) said that the treaties adopted by regional organizations contributed in the same way as the United Nations instruments to the promotion and universal observance of human rights and

fundamental freedoms. By ratifying Protocol No. 6 to the European Convention for the Protection of Human Rights, which prohibited the application of the death penalty in peacetime, Estonia had joined the countries that had pronounced in favour of the complete abolition of the death penalty. Since the restoration of independence, a de facto moratorium on executions had been in force because the Supreme Court, which, under the Law on Executive Procedures, had sole authority to authorize the use of the death penalty, had refused to accept that responsibility on constitutional grounds. Moreover, in 1992, the President of the Republic had announced that he was in favour of the abolition of the death penalty, a position that was consistent with the worldwide trend, since nearly half the countries in the world had abolished the death penalty in law or in practice. The overwhelming majority of studies on the issue demonstrated that the death penalty did not have a greater deterrent effect than other punishments, yet the risk of error was inescapable.

62. Estonia was also planning to accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and it strongly supported the draft resolution to be submitted by Italy on the issue.

63. Ms. WILKINSON (Amnesty International) said she was alarmed at the fact that, during the previous 12 months, Jamaica had withdrawn from the Optional Protocol to the International Covenant on Civil and Political Rights and that the Democratic People's Republic of Korea had announced its intention to withdraw from the Covenant itself, decisions that flouted the international community's commitment to strengthen the human rights treaty system. Jamaica's decision was particularly worrying because Jamaica had not concealed the fact that it wished to make it easier to execute prisoners on death row, although the withdrawal deprived all Jamaicans of the right to petition the Human Rights Committee. She feared that other States would take similar action and, indeed, the Governments of Trinidad and Tobago and Barbados had announced their intention to do so. Amnesty International therefore called on the Commission to remind the Democratic People's Republic of Korea that it remained bound by the Covenant and that any decision to withdraw was null and void because, as the Human Rights Committee had expressed it in its General Comment No. 26(61), adopted in October 1997, "international law does not permit a State which has ratified or acceded or succeeded to the Covenant to denounce it or withdraw from it". Amnesty International also called on the Commission to urge Jamaica to revoke its decision on the Optional Protocol and to urge the Governments of Trinidad and Tobago and Barbados not to follow Jamaica's example.

64. She welcomed the fact that, since the fifty-third session, at least four States had abolished the death penalty, thereby bringing the number of abolitionist countries to 103; and that, in addition to the suspension of executions in a number of countries, including Lithuania and the Russian Federation, and mass commutations of death sentences in Mali, Malawi and Turkmenistan, two more States, Colombia and Greece, had ratified the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. Nevertheless, executions had continued to take place in 1997 in more than 30 countries, including China, Iraq and Saudi Arabia, and also in Iran

and the United States, two countries where juveniles had been sentenced to death, and in Nigeria and Pakistan, where juveniles had even been executed.

65. Amnesty International was convinced that the death penalty was incompatible with the right to life and the right not to be subjected to cruel, inhuman or degrading punishment or treatment and it urged the Commission to reaffirm the need to abolish the use of such barbaric punishment and to call for an immediate moratorium on executions in all countries.

66. Mr. PEREZ (American Association of Jurists - AAJ) said it was regrettable that the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights did not provide for any procedure for settling disputes between States parties and therefore suggested that a provision to that effect should be inserted.

67. AAJ also thought it anachronistic to restrict the ability to submit communications concerning a given State to individuals or groups subject to its jurisdiction. It was now recognized that individuals were subjects of international law and they should therefore be able to lodge a complaint with the relevant international bodies if their rights were violated, whether by the State with jurisdiction over them or by any other State. That was even more true of economic, social and cultural rights, now that, as a result of economic globalization, economic and social phenomena in a country or a group of countries might have important repercussions in another country or group of countries. Clearly, then, on the one hand, there was a universal active obligation to guarantee those rights through international cooperation and, on the other, third parties such as international financial institutions and certain States or transnational corporations had a degree of responsibility with regard to violations of those rights. It was not a matter of absolving States where such violations occurred of their responsibilities, but of introducing the concept of the joint responsibility of State authorities and international organizations and/or other States that contributed by their policies to such violations. AAJ had therefore proposed that, in the text of article 1 of the draft optional protocol, the words "subject to its jurisdiction" should be deleted.

68. Moreover, the draft should be amended in such a way as to make it possible for non-governmental organizations to bring complaints even if they were not acting directly on the victim's behalf. AAJ's recommendations and suggestions were set forth in detail in document E/CN.4/1998/84.

69. Ms. PREJEAN (Radical Transnational Party) recalled that, in its resolution 1997/12 on the question of the death penalty, the Commission had affirmed that the abolition of the death penalty contributed "to the enhancement of human dignity and to the progressive development of human rights".

70. The first affirmation went far beyond the mere protection of the right to life. It was a way of strongly rejecting a punishment that reduced the offender to disposable waste. The torture entailed in sentencing a person to death and in the wait for execution was also incompatible with human dignity even when so-called humane methods were used, for there was no humane way to kill a person. Even criminals condemned to death could feel emotions and they

not only experienced the fear of death itself and the fear of not being able to control the physical effects, but also suffered knowing what their families would endure during those last moments. The second affirmation was of crucial importance because it meant that the Commission had recognized that the right not to be tortured and killed was a human right that was not negotiable and was not to be given or taken away for good or bad behaviour. It was a step towards the recognition of a new human right for every individual.

71. She appealed particularly to her own country, the United States of America, which prided itself on being a land of liberty and democracy, but where more and more people were executed every year, including the mentally disabled and juveniles of 16. She also appealed to the States members of the Security Council, such as China and the United States, which had agreed that provision should not be made for the death penalty in the statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda for crimes such as genocide and ethnic cleansing, but which continued to impose it freely for murder and even theft in their own territories, to reject such an intolerable anachronism.

72. The abolition of the death penalty was a way of safeguarding human rights. It was therefore vital that, in 1998, even more States members of the Commission should sponsor and vote in favour of a draft resolution on the abolition of the death penalty and support the Commission's efforts in that area.

73. Mr. NAIR (Asian Cultural Forum on Development - ACFOD) said that the ratification of international human rights instruments was merely a statement of intent, which had no effect if the States parties did not take any steps to bring their domestic legislation into line with the provisions of those instruments. Moreover, the reservations that many States expressed to various provisions deprived such instruments of much of their effectiveness. India, for example, had made reservations to article 9 of the International Covenant on Civil and Political Rights and to articles 20, 21 and 22 of the Convention against Torture. In addition, all the Asian States had made reservations on ratification of both Covenants and others, such as Bangladesh, Malaysia and China, had not even ratified them. Moreover, many amendments to domestic legislation were purely formal. The Government of Nepal, for example, after having ratified the Convention against Torture, had in 1996 enacted a law whereby the victims of torture were entitled to compensation, but torture was not recognized as a criminal offence and the police were protected from prosecution.

74. In addition, the ratification of human rights instruments had little meaning if the States parties refused to comply with their reporting obligations, as occurred with India, Pakistan and Nepal. Bangladesh, which had ratified only 3 out of the 14 major human rights instruments, had, during the fifty-first session of the Commission, called into question the impartiality of the members of the treaty bodies.

75. Lastly, he suggested that, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights, ratification of the core human rights instruments should be made a precondition for membership of the Commission.

76. Mr. WADLOW (Association for World Education), making a joint statement on behalf of 37 other non-governmental organizations, a list of which had been made available to participants, drew attention to the important role of special rapporteurs in the promotion and protection of human rights, for their reports systematically examined the issues covered by their mandate and put forward recommendations on ways of redressing reported violations. It was a matter for concern, therefore, that efforts had recently been made to limit their independence by preventing their access to certain countries and censoring their reports after they had been printed and submitted to the Commission or the Sub-Commission. In that regard, he welcomed the consensus of the special rapporteurs and representatives, experts and chairpersons of working groups of the Commission on Human Rights and the advisory services programme at their meeting in May 1997 that the special rapporteurs should not be requested to amend their reports merely because certain passages were deemed offensive by a particular member State or group of member States. It was of crucial importance strongly to defend the independence of the special rapporteurs and the non-governmental organizations pledged to strengthen their cooperation with them.

77. Ms. GRAF (International League for the Rights and Liberation of Peoples - LIDLIP) said it was regrettable that difficulties were increasingly being encountered in the implementation of the international human rights instruments, even though the number of States parties to those instruments was continuing to rise. With regard to the International Covenant on Economic, Social and Cultural Rights, Governments' cooperation with the Committee on Economic, Social and Cultural Rights was of vital importance for the promotion of those rights in view of the demands of the globalization of the economy and the financial markets. LIDLIP was therefore in favour of the idea of an optional protocol that would allow individuals or groups who considered themselves to be victims of violations of the rights provided for in the Covenant to submit communications to the monitoring committee.

78. In addition, LIDLIP noted that 1998 was also the fiftieth anniversary of the adoption by the General Assembly of the Convention on the Prevention and Punishment of the Crime of Genocide. She therefore strongly urged the Commission to take steps to strengthen the Convention, to have it ratified by all States and to act to ensure that ratification was accompanied by legislative measures that would ensure the effective implementation of its provisions.

The meeting rose at 5.55 p.m.